

(7) A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For solid waste incinerators which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For solid waste incinerators which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the Acid Rain Program.

(8) A non-utility unit.

(c) A certifying official of any unit may petition the Administrator for a determination of applicability under this section.

(1) *Petition content.* The petition shall be in writing and include identification of the unit and relevant and appropriate facts about the unit. The petition shall meet the requirements of § 72.21. In accordance with § 72.21(d), the certifying official shall provide each owner or operator of the unit, facility, or source with a copy of the petition and a copy of the Administrator's response.

(2) *Timing.* The petition shall be submitted to the Administrator prior to the issuance (including renewal) of a Phase II Acid Rain permit for the unit as a final agency action.

(3) *Submission.* All submittals under this section shall be made by the certifying official to the Director, Acid Rain Division, (6204J), 401 M Street, SW., Washington, DC, 20460.

(4) *Response.* The Administrator will issue a written response based upon the factual submittal meeting the requirements of paragraph (c)(1) of this section.

(5) *Administrative appeals.* The Administrator's determination of applicability is a decision appealable under 40 CFR part 78 of this chapter.

(6) *Effect of determination.* The Administrator's determination of applicability shall be binding upon the permitting authority, unless the petition is found to have contained significant errors or omissions.

[58 FR 3650, Jan. 11, 1993, as amended at 58 FR 15648, Mar. 23, 1993]

§ 72.7 New units exemption.

(a) *Applicability.* This section applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05 percent or less by weight, as determined in accordance with paragraph (d)(2) of this section.

(b) *Petition for written exemption.* The designated representative, authorized in accordance with subpart B of this part, of a source that includes a unit under paragraph (a) of this section may petition the permitting authority for a written exemption, or to renew a written exemption, for the unit from certain requirements of the Acid Rain Program. The petition shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the unit.

(2) The nameplate capacity of each generator served by the unit.

(3) A list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with paragraph (a) of this section.

(4) A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.

(5) The special provisions in paragraph (d) of this section.

(c) *Permitting authority's action.*

(1)(i) The permitting authority shall issue, for any unit meeting the requirements of paragraphs (a) and (b) of this section, a written exemption from the requirements of the Acid Rain Program except for the requirements specified in this section and §§ 72.1 through 72.6 and §§ 72.10 through 72.13; *provided* that no unit shall be exempted unless allowances, equal in number to, and with the same or earlier compliance use date as, all of those allocated under subpart B of part 73 of this chapter for any year for which the unit will be exempted,

are deducted from the unit's Allowance Tracking System account.

(ii) The exemption shall take effect on January 1 of the year immediately following the earlier of the date on which the written exemption is issued subject to administrative appeal under part 78 of this chapter or is issued as a final agency action subject to judicial review, in accordance with paragraph (c)(2) of this section; *provided* that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of the Acid Rain Program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the Acid Rain Program whether the violation occurs before or after the exemption takes effect.

(2) In considering and issuing or denying a written exemption under paragraph (c)(1) of this section, the permitting authority shall apply the procedures in subparts F and G of this part and part 70 of this chapter, as applicable, by:

(i) Treating the petition as an Acid Rain permit application under such provisions;

(ii) Issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions; and

(iii) Where the Administrator is the permitting authority, issuing or denying a written exemption that is treated as the issuance or denial of a permit under subpart F of this part or, where a State is the permitting authority, issuing or denying a proposed written exemption that is treated as the issuance or denial of a proposed permit under subpart G of this part and part 70 of this chapter; *provided* that no provision under subparts F and G of this part and part 70 of this chapter concerning the content, effective date, or term of an Acid Rain permit shall apply to the written exemption or proposed written exemption under this section.

(3) A written exemption issued under this section shall have a term of 5 years from its effective date, except as

provided in paragraph (d)(4) of this section.

(d) *Special provisions.* (1) The owners and operators of each unit exempted under this section shall surrender allowances equal in number to, and with the same or an earlier compliance use date as, all of those allocated to the unit under subpart B of part 73 of this chapter for any year for which the unit is exempted and shall waive the right to receive any allowances to be allocated under subpart B of part 73 of this chapter for any year for which the unit is exempted.

(2) The owners and operators of each unit exempted under this section shall determine the sulfur content by weight of its fuel as follows:

(i) For petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ASTM methods ASTM D4057-88 and ASTM D129-91, ASTM D2622-92, or ASTM D4294-90 (all methods incorporated by reference under § 72.13 of this part.)

(ii) For natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be assumed to be 0.05 per cent or less by weight.

(iii) For gaseous fuel (other than natural gas) that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ASTM methods ASTM D1072-90 and ASTM D1265-92 (incorporated by reference under § 72.13 of this part); *provided* that if the gaseous fuel is delivered by pipeline to the unit, a sample of the fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using ASTM method ASTM D1072-90 (incorporated by reference under § 72.13 of this part).

(3) The owners and operators of each unit exempted under this section shall retain at the source that includes the unit, the records of the results of the tests performed under paragraph (d)(2) (i) and (iii) of this section and a copy of the purchase agreements for the fuel